

## Message Text

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ACTION EUR-25

INFO OCT-01 ISO-00 IO-14 CIAE-00 DODE-00 PM-07 H-03 INR-10

L-03 NSAE-00 NSC-07 PA-04 RSC-01 PRS-01 SP-03 SS-20

USIA-15 SAJ-01 DRC-01 /116 W  
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R 051712Z APR 74

FM USMISSION BERLIN  
TO AMEMBASSY BONN  
SECSTATE WASHDC 3218  
INFO AMEMBASSY LONDON  
AMEMBASSY PARIS  
AMEMBASSY MOSCOW

C O N F I D E N T I A L SECTION 1 OF 2BERLIN 0602

E.O. 11652: GDS

TAGS: PGOV, WB, GW, GE,

SUBJECT: BRUECKMANN CASE DECISION

REF: BONN 5001

1. SUMMARY: FEDERAL CONSTITUTIONAL COURT'S DECISION  
IN BRUECKMANN CASE APPEARS TO HAVE INCREASED LIKELIHOOD  
THAT GIRL WILL NOT BE EXTRADITED TO GDR. SENATOR FOR  
JUSTICE KORBER TOLD PRESS CONFERENCE APRIL 4 THAT HE  
WILL DIRECT PUBLIC PROSECUTOR TO COOPERATE WITH DEFENSE  
ATTORNEY IN ENSURING OPPORTUNITY FOR HIGHEST BERLIN  
COURT (KAMMERGERICHT) TO REVIEW CASE IN LIGHT OF KARLSRUHE  
DECISION. - A MAIN ELEMENT OF THAT DECISION IS IMPLICATION THAT  
CONSTITUTIONAL COURT IS COMPETENT TO RECEIVE COMPLAINTS FROM  
BERLINERS. BERLIN PRESS HAS WELCOMED THIS AS FURTHER  
DEVELOPMENT OF LEGAL UNITY BETWEEN CITY AND FRG.  
END SUMMARY.

2. WHILE WE ARE STILL DEPENDENT UPON NEWS ACCOUNTS,  
MAIN ELEMENTS OF KARLSRUHE DECISION APPEAR TO BE:  
A. BRUECKMANN'S APPEAL IS REJECTED IN SENSE THAT  
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COURT ITSELF UNABLE TO GIVE DIRECT RELIEF, BECAUSE

OF ALLIED RESERVATION THAT CONSTITUTIONAL COURT CANNOT EXERCISE JURISDICTION DIRECTLY IN BERLIN.

B. CONSTITUTIONAL COURT CAN, HOWEVER, CONSIDER WHETHER LAW ON WHICH COMPLAINT IS BASED IS CONSTITUTIONAL OR NOT, PROVIDED THAT LAW IS FRG LAW, SINCE THERE SHOULD BE LEGAL UNITY BETWEEN FRG AND BERLIN, AND BERLINERS SHOULD HAVE EQUAL PROTECTION UNDER CONSTITUTION WITH RESIDENTS OF FRG.

C. LAW ON INNER-GERMAN LEGAL ASSISTANCE IS STILL CONSTITUTIONAL AND IS APPARENTLY NOT INVALIDATED BY FRG-GDR BASIC TREATY.

D. WHILE LEGAL ASSISTANCE LAW IS CONSTITUTIONAL, IT MAY BE USED TO EXTRADITE INDIVIDUAL ONLY IF CERTAIN CONDITIONS ARE MET, INCLUDING GUARANTEES THAT THERE WILL BE FAIR TRIAL, SENTENCE WILL BE REASONABLE, BRUECKMANN WILL BE ABLE TO RETURN TO WEST BERLIN AFTER MEETING LEGAL OBLIGATIONS, MOTHER WILL BE ABLE TO VISIT HER IN GDR AND NOT HERSELF FACE DIFFICULTIES, GIRL'S PSYCHOLOGICAL HEALTH IS GOOD ENOUGH SO THAT THERE IS NO RISK SHE WILL COMMIT SUICIDE IF TURNED OVER TO GDR, AND, DESPITE FACT SHE FLED GDR, SHE WILL BE TREATED AS NORMAL CRIMINAL SUSPECT, NOT AS POLITICAL ENEMY OF STATE.

E. KARLSRUHE COURT WOULD NOT EXAMINE FACTS OF CASE TO DETERMINE HOW THESE PRINCIPLES APPLY IN LIGHT OF ALLIED RESERVATIONS, BUT BERLIN OFFICIALS AND COURTS SHOULD MAKE USE OF THEM.

3. IN PRESS CONFERENCE SHORTLY AFTER DECISION, SENATOR KORBER SAID THAT COURT HAD IN NO WAY MODIFIED ITS POSITION WITH RESPECT TO COMPETENCE IN BERLIN MATTERS AND HAD NOT VIOLATED ALLIED LEGAL POSITION. IT HAD MERELY DEVELOPED EXISTING SITUATION TO NEW LEVEL. KORBER IMPLIED THAT THIS WAS HEALTHY DEVELOPMENT FOR CITY IN VIEW OF DESIRABILITY OF ENSURING LEGAL UNITY BETWEEN BERLIN AND FRG. HE NOTED THAT BRUECKMANN LAWYER HAD PREVIOUS DAY FILED APPEAL FOR NEW HEARING TO KAMMERGERICHT, AND SAID THAT PUBLIC PROSECUTOR WOULD COOPERATE IN VIEW OF KARLSRUHE DECISION. HE SUGGESTED THAT NEW AND FINAL KAMMERGERICHT DECISION TAKING INTO ACCOUNT CONFIDENTIAL

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KARLSRUHE PRINCIPLES COULD COME WITHIN FEW DAYS.  
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INFO OCT-01 ISO-00 SAJ-01 IO-14 CIAE-00 DODE-00 PM-07 H-03

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TO AMEMBASSY BONN

SECSTATE WASHDC 3219

INFO AMEMBASSY LONDON

AMEMBASSY PARIS

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C O N F I D E N T I A L SECTION 2 OF 2 BERLIN 0602

E.O. 11652: GDS

TAGS: PGOV, WB, GW, GE,

SUBJECT: BRUECKMANN CASE DECISION

4. BELIN PRESS GAVE HEAVY COVERAGE TO STORY WITH  
TAGESSPIEGEL AND MORGENPOST CARRYING EDITORIAL COMMENT  
FAVORABLE TO DECISION AS NEW AFFIRMATION OF FRG-BERLIN  
TIES. TAGESSPIEGEL CHIEF POLITICAL EDITOR BOELKE  
IN LONG THOUGHTFUL PIECE SAID THAT SURPRISING ELEMENT  
OF DECISION WAS ASSERTION THAT REQUIREMENT OF LEGAL  
UNITY WAS SO IMPORTANT THAT KARLSRUHE COURT WOULD REVIEW  
BERLIN CASES TO DETERMINE WHETHER FEDERAL LAWS APPLIED  
IN BERLIN WERE CONSTITUTIONAL. THIS OPENED NEW CHANNEL  
FOR BERLINERS TO OBTAIN REVIEW OF CASES AT HIGHEST  
CONSTITUTIONAL LEVEL, HE NOTED, BUT ALSO IMPOSED UPON  
COURTS AND JUDICIAL OFFICIALS NEED TO EXERCISE CAUTION  
LEST ALLIED RESERVATION ON KARLSRUHE COMPETENCE BE  
VIOLATED. BOELKE INDICATED THAT SO LONG AS KARLSRUHE  
FINDINGS IN BERLIN CASES WERE GIVEN ONLY INDIRECT EFFECT,  
THAT IS, SO LONG AS FINAL DECISION WAS TAKEN BY BERLIN  
AUTHORITIES ACTING IN CONFORMITY BUT NOT DIRECTLY AT  
ORDERS OF KARLSRUHE, LEGAL SITUATION WOULD BE PRESERVED.  
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5. GENERAL ASSESSMENT NOW APPEARS TO BE THAT BRUECKMANN WILL REMAIN IN WEST BERLIN. KORBER'S ESTIMATE OF FINAL DECISION IN FEW DAYS MAY WELL BE PREMATURE, HOWEVER. PAPERS ALSO REPORT FRG JUSTICE MINISTER JAHN TOLD KORBER FRG WOULD EXAMINE KARLSRUHE DECISION TO SEE IF IT SHOULD AFFECT FRG'S HANDLING OF BRUECKMANN APPEAL TO STRASBOURG HUMAN RIGHTS COMMISSION.

6. COMMENT: WE APPRECIATE DESIRE OF BERLINERS TO BE ABLE TO APPEAL DIRECTLY TO HIGHEST FEDERAL COURT CAPABLE OF INTERPRETING CONSTITUTION RATHER THAN OF HAVING TO RELY ON KAMMERGERICHT. WE ARE LESS SANGUINE THAN BOELKE AND KORBER THAT KARLSRUHE DECISION CAN BE MADE TO SQUARE FULLY WITH ALLIED LEGAL POSITION. ALLIED RESERVATION, AS STATED MOST RECENTLY IN AIDE MEMOIRE ON BRUECKMANN CASE, IS THAT KARLSRUHE IS NOT COMPETENT IN BERLIN MATTERS. IN PARTICULAR, ALLIES HAVE STATED THAT KARLSRUHE MAY REVIEW NEITHER CONSTITUTIONALITY OF ACTS OF BERLIN AUTHORITIES NOR CONSTITUTIONALITY OF BERLIN LAWS, INCLUDING THOSE BERLIN LAWS WHICH WERE TAKEN OVER BY MANTELGESETZ FROM FRG.

7. LIKEWISE, COURT AND COMMENTATORS APPEAR NOT TO UNDERSTAND FULLY MANNER IN WHICH KARLSRUHE DECISIONS HAVE BEEN GIVEN INDIRECT EFFECT IN BERLIN UNTIL NOW WITH TACIT ALLIED CONCURRENCE. SUCH DECISIONS HAVE PREVIOUSLY BEEN RENDERED IN CASES HAVING ORIGIN OUTSIDE BERLIN. BERLIN AUTHORITIES HAVE THEN TAKEN GUIDANCE FROM DECISIONS FOR THEIR OWN LEGISLATIVE OR JUDICIAL ACTS. NOW COURT APPEARS TO BE SEEKING TO CREATE SITUATION IN WHICH BERLIN AUTHORITIES RATIFY ACTIONS THAT COURT WOULD TAKE ON BERLIN MATTERS BROUGHT TO ITS ATTENTION BY BERLINERS. IF THIS PROCEDURE IS INSTITUTED ON WIDE SCALE IT WOULD BE EXTREMELY DIFFICULT TO RESIST CONCLUSION THAT KARLSRUHE HAD OBTAINED COMPETENCE IN BERLIN MATTERS.

8. IN PRESENT CASE SENAT APPEARS TO BE AWARE OF IMPORTANCE OF ORCHESTRATING SCENARIO IN WAY THAT WILL LEAVE IT OPEN TO ARGUE THAT FINAL DECISION ON  
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BRUECKMANN HAS BEEN MADE BY BERLIN AUTHORITIES, NOT KARLSRUHE. BEFORE NEW PROCEDURE IMPLICIT IN CONSTITUTIONAL COURT'S BRUECKMANN DECISION IS FURTHER INSTITUTIONALIZED, HOWEVER, ALLIES MAY WISH TO CONSIDER WHETHER MATTER REQUIRES CONSULTATIONS WITH FRG TO ASSURE THAT WITTINGLY OR OTHERWISE SITUATION DOES NOT BECOME DISTORTED AND INVITE SOVIET INTERVENTION. KLEIN

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